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David Bornheimer

328

2 I'm speaking in generally, I have
3 been through this before, I didn't work on
4 this specifically, but sometimes it takes
5 several months to get them set up properly to
6 get the receivables billed to satisfy them.

7 That's my read of what was happening
8 here. It wasn't Midland wasn't following the
9 plan. There was possibly some time necessary
10 to get the servicer's systems adjusted
11 accordingly pursuant to the plan, and once
12 that happened, then, the payments were made
13 and applied to the B note.

14 You can see that in the loan history
15 report.

16 Q. Let's go with that theory.

17 Did that actually happen in this
18 case or are you just speculating?

19 A. That's been my experience in dealing
20 with external master servicer's. Many times,
21 most times, there's a period where it takes
22 to get your servicing system set up pursuant
23 to a modification or a change in terms.

24 Whereas this was, for the B note.

25 Q. That would be information that your

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David Bornheimer

329

2 prior asset manager would know as well?

3 A. Right. Because they are the ones
4 that work with Wells, in this case, to make
5 sure their system reflected the plan.

6 Q. Is there anything in that CDC plan
7 that reflects what you just said; that
8 Midland shall be provided with a certain
9 period of time in order to get their systems
10 in compliance with the CDC plan payments?

11 A. I have not reviewed the plan looking
12 for that. Again, it takes time to get
13 systems modified.

14 Q. If we go back, go to the next page,
15 you had previously testified in April of
16 2013, Midland is following the waterfall, but
17 there's not enough money to make the B note
18 payment, correct?

19 A. Right. At the bottom there's a
20 negative \$98,000.

21 Q. So, according to your attorney, the
22 schedule that he prepared, and the schedule
23 he sent to Centrum, he's saying the cash
24 balance in the account in April of 2013 was
25 \$300,000, more or less. After he applied all

1 David Bornheimer 330

2 the payments under the waterfall, there's not
3 enough money to make the B note payment,
4 which caused the B note to go into default,
5 right?

6 A. Right. There was insufficient cash
7 flow.

8 Q. It's been your consistent position
9 that the B note went interest default in
10 April of 2013?

11 A. Yes. There was no payment made.

12 Q. But the problem is, if we look at
13 Exhibit 66, which is the month of April 2013,
14 the cash balance is not what your attorney
15 reflected on the schedule of \$300,000, but
16 rather the actual money in the account was
17 \$560,000, correct?

18 A. I see that on the bank statement.

19 Q. Do you know why your attorney took
20 this position on the schedule when there was
21 actually money in the account?

22 Isn't the best thing to look at,
23 sir, I know you're looking at your loan
24 history, here's the money in the account, the
25 bank statement?

1 David Bornheimer 331

2 A. No, I don't think so, because that's
3 a moment in time, whereas, it could be a
4 timing issue as to how much money was
5 available, when funds were posted.

6 Q. I'll get you the next one.

7 If you want to look at the month
8 after, we can clarify the moment in time
9 issue, right?

10 Here's May of 2013. And we can mark
11 it.

12 (Whereupon, Bornheimer Exhibit 69,
13 bank statement was marked, for
14 identification, as of this date.)

15 Q. This is Bornheimer 69. Bornheimer
16 66 is the March/April period of time, and
17 Bornheimer 69 is, I give you the next month
18 just in case we have an overlap like you just
19 said.

23 A. The average balance, yes.

24 Q. So, that average balance of money
25 that's in the account is a lot more than

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David Bornheimer

332

2 \$27,000, right?

3 A. I see deposits of \$403,000. And
4 deductions of \$622,000.

5 Q. But the deposits get added to the
6 prior balance.

7 If you look, the bank statement
8 shows your average balance?

9 A. Again, you're looking at moments in
10 time as opposed to what the amount that had
11 to be run through the waterfall was at
12 another moment in time. I think, it's hard
13 to compare these two.

14 The way I look at it is, in the loan
15 history report, this is a nice analysis that
16 the attorney has attached to the attorney's
17 letter.

18 Q. We took your attorney's analysis and
19 that's what our accountant did, he followed
20 the same type of analysis.

21 My question to you is, when you look
22 at a default, shouldn't you look at a moment
23 in time?

24 A. When a payment wasn't made. The
25 default wouldn't have occurred to the loan

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David Bornheimer

333

2 document --

3 Q. Right.

4 We should look at a moment in time
5 when a payment default occurs, right?

6 A. Again, same answer.

7 We look when the payment wasn't made
8 in accordance with the loan documents and the
9 plan requirements.

10 Q. I agree, but isn't this a little bit
11 of a different situation than when a borrower
12 is controlling the money and the borrower is
13 supposed to make payments?

14 In this situation, Midland is
15 controlling the money, right?

16 A. Right.

17 Q. So, Midland has the money, has
18 possession of the money, and is responsible
19 for following the waterfall, right?

20 A. Right.

21 Q. I'm showing you bank statements in a
22 moment in time when Midland has asserted in
23 court a payment default occurred on this
24 moment in time, right?

25 A. Right.

1

David Bornheimer

334

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Q. But, in that moment in time, the

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bank statements that Midland is controlling

4

actually reflect more cash in the bank to

5

make the payment; do you agree with that?

6

A. Again, it depends how many payments

7

were supposed to come out of that bank

8

account at this moment in time.

9

Q. But at that moment, we just did

10

that. We'll do all of that again. We just

11

did it.

12

In April of 2013 there was a monthly

13

principle and interest debt payment due,

14

right?

15

A. Right.

16

Q. That monthly principal debt service

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was \$27,792, or it's \$23,000, it's somewhere

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in the \$20,000 range; would you agree with

19

me?

20

Sir, there's still an outstanding

21

question; if you could answer my question?

22

MR. FELD: Give him a chance to

23

look at the document.

24

MR. MANISCALCO: Okay.

25

(Whereupon, the record was read